



COMES NOW Defendant Credit Payment Services, Inc. ("CPS"), by and through its counsel, pursuant to Civil Local Rule 10-5, and hereby submits this Motion for leave to file certain documents under seal in connection with Defendant Credit Payment Service, Inc.'s Motion for Summary Judgment and Memorandum in Support (the "Motion"). Further, Defendant states as follows:

1. A Stipulated Protective Order was entered in this case on January 11, 2013. (Dkt. 32), to provide guidelines regarding the exchange of confidential information between the Plaintiff and all Defendants (the "Parties"). A First Amended Stipulated Protective Order was entered in this case on January 30, 2014 (Doc. 145) to add provisions for highly confidential information exchanged between the Parties (together, Doc 32 and Doc 145 are hereafter referred to as (the "Protective Order").

2. Defendant also seeks to file under seal pursuant to Civil L.R. 10-5, Exhibit 5 to the Opposition, further described as deposition transcript excerpts containing testimony of Michael Ferry, taken January 10, 2014 in this litigation. This deposition transcript was designated as Confidential pursuant to the Protective Order, and as such, this document is requested to be filed under seal.

3. Defendant also seeks to file under seal pursuant to Civil L.R. 10-5, Exhibit 6 to the Opposition, further described as deposition transcript excerpts containing testimony of James Gee, taken January 23, 2014 in this litigation. This deposition transcript was designated as Confidential pursuant to the Protective Order, and as such, this document is requested to be filed under seal.

4. Defendant also seeks to file under seal pursuant to Civil L.R. 10-5, Exhibit 7 to the Opposition, further described as Deposition Exhibit 9, a June 28, 2011 Publishing Agreement between Click Media and AC Referral. This document was by produced by Defendant Click Media in this litigation, and was designated as Confidential pursuant to the Protective Order, and as such, this document is requested to be filed under seal.

5. Defendant also seeks to file under seal pursuant to Civil L.R. 10-5, Exhibit 11 to the Opposition, further described as deposition transcript excerpts containing testimony of Plaintiff Flemming Kristensen, taken January 21, 2014 in this litigation. This deposition transcript

1 was designated as Confidential pursuant to the Protective Order, and as such, this document is  
2 requested to be filed under seal.

3 6. Defendant seeks to file under seal pursuant to Civil L.R. 10-5, Exhibit 14 to the  
4 Opposition, further described as the Expert Declaration of Lisa C. Snow. This document was  
5 designated “Attorneys’ Eyes Only” because it contains confidential business and customer  
6 information of the Defendants in this action.

7 7. The documents in paragraphs 2 through 6 above have been designated as  
8 “Confidential” and “Attorneys Eyes Only” pursuant to the Protective Order because they contain  
9 confidential and proprietary business information. The Protective Order contemplates that  
10 confidential, proprietary, or private information may be disclosed during the course of discovery,  
11 and that the Parties shall follow the procedures set forth in Civil Local Rule 10-5 for filing  
12 confidential documents under seal.

13 8. Paragraph 12.4 of the agreed-to Protective Order provides:

14 [...] [A] Party may not file in the public record in this action any Protected  
15 Material. A party that seeks to file under seal any Protected Material must  
16 comply with Civil Local Rule 10-5. Protected Material may only be filed under  
seal pursuant to a court order authorizing the sealing of the specific Protected  
Material at issue.

17 (Dkt. 145, emphasis added).

18 9. Protected Material is defined by the Protective Order to include any “Disclosure or  
19 Discovery Material that is designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”  
20 (Dkt. 145, ¶ 2.14).

21 10. Pursuant to Paragraphs 12.4 and 2.14 of the Protective Order, CPS moved to file  
22 Exhibits 5, 6, 7, 11, and 14 filed in support the Motion.

23 11. As the non-designating party, CPS is not in a position to remove the confidential  
24 and/or AEO designations from Exhibits 5, 6, 7, 11 and 14.

25 12. If the Court desires that Exhibits 5, 6, 7, 11, and 14 should be available to the  
26 public, CPS has no objection. CPS filed its Motion to Seal in an abundance of caution to ensure it  
27 complied with the Protective Order.  
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**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that on October 24, 2014, I caused the above and foregoing document entitled MOTION FOR LEAVE TO FILE CERTAIN DOCUMENTS UNDER SEAL to be served on all counsel of record through the Court's CM/ECF system.

/s/ Gregory T. Wolf  
An Attorney for Defendants